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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,355	09/29/2003	Edward R. Newton	1898-4	3010
7590	10/20/2004		EXAMINER	
John S. Egbert Harrison & Egbert 7th Floor 412 Main Street Houston, TX 77002			CHIN, PAUL T	
			ART UNIT	PAPER NUMBER
			3652	
DATE MAILED: 10/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/672,355	NEWTON, EDWARD R. <i>ST</i>	
	<b>Examiner</b>	<b>Art Unit</b>	
	PAUL T. CHIN	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 29 September 2003.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 29 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/29/2003</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement (IDS) submitted on September 29, 2003, was filed and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7,14,15, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Lipkowitz (5,769,264).

Lipkowitz (5,769,264) discloses a beverage holder comprising a panel (18) having a plurality of slots (48,48) (at least four slots) having C-shape or a circular shape facing different directions, and a support element (34).

4. Claims 1-7,14,15, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wissman (1,659,344).

Wissman (1,659,344) discloses a beverage holder comprising a panel having a plurality of slots (6a, 6a) (at least four slots) having C-shape or a circular shape facing different directions, and a support element (10).

5. Claims 1-6,14,15, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Rake (1,305,164).

Rake (1,305,164) discloses a beverage holder comprising a panel having a plurality of slots (8,9) (at least four slots) having C-shape or a circular shape facing different directions.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8-13,16,17,19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wissman (1,659,344) in view of Sporttolari (2,336,649).

Wissman (1,659,344), as presented in section 4 above, does not show *at least three tapered support elements positioned around the panel*. However, Sporttolari (2,336,649) shows *at least three tapered support elements positioned around the panel* and it would have been design choice to provide a tapered support element on the Wissman (1,659,344) as taught by Sporttolari (2,336,649) so that cake cones can be positioned in the support elements.

8. Claims 7-13,16,17,19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rake (1,305,164) in view of Sporttolari (2,336,649).

Rake (1,305,164), as presented in section 5 above, does not show *at least three tapered support elements positioned around the panel*. However, Sporttolari (2,336,649) shows *at least three tapered support elements positioned around the panel* and it would have been design choice to provide a tapered support element on the Rake (1,305,164) as

taught by Sporttolari (2,336,649) so that cake cones can be positioned in the support elements.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (703) 305-1524. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (703) 308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



PAUL T. CHIN  
Examiner  
Art Unit 3652